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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,528	04/10/2001	Chris Jeff Gardner	2F2000A	8456
24927	7590	03/26/2004	EXAMINER	
STANFORDPATENTS L.L.C.			CHORBAJI, MONZER R	
P.O. BOX 422			ART UNIT	
SLIDELL, LA 70459			PAPER NUMBER	
			1744	

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/829,528		GARDNER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	MONZER R CHORBAJI		1744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 April 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/19/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 6-7, 13-14, and 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, line 7; applicant uses the term "serrifrom". The meaning of such a term is not clear, the specification does not provide an explanation for "serrifrom". Clarification is needed to understand claim 6. The same applies to claims 7, 13-14, and 18-19.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8-9, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryson, Jr., et al (U.S.P.N. 5,148,984).

With respect to claims 1, 8, and 15, Bryson, Jr., et al discloses a dispenser with the following features: a base (figure 1, 16), a cover (figure 1, 18), perforations in the cover and the base (figure 1, 84 and 98), mounting means

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(figure 9, 78), the base has means for increasing the thermal absorption and transfer by being elevated from the surface beneath the dispenser (figure 6, 74 and the unlabeled bottom surface of the base), means for conjoining the cover and the base by having corresponding surfaces (col.3, lines 65-68 and col.4, lines 1-2) such that the walls of the base are conjoined to form an internal space (figure 3, unlabeled space within the dispenser), a base having an interior surface (figure 3, 30), a base having an exterior surface (figure 6, the unlabeled bottom surface of the base), and closed interior and exterior walls for both the cover and the base (col.3, lines 28-68 and col.4, lines 1-37). In addition, it would be credible to believe that when the fragrance material (figure 1, 20) of the ('984) reference is heated, a fragrance is emitted to the surroundings. Furthermore, since the ('984) does not teach the type of material used to construct the dispenser, then it is credible to believe that whether the dispenser is made of metallic or polymer materials or other known material of construction that such material does absorb and conduct heat at some level of heating. Regarding placing the dispenser over a computer monitor, such an application falls under intended use and does not constitute a limitation.

With respect to claims 9 and 16, Bryson, Jr., et al discloses a dispenser with a cover (figure 1, 18) and a base (figure 1, 16) having perforations therein (figure 1, 84 and 98) to promote perfuming of the air.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryson, Jr., et al (U.S.P.N. 5,148,984).

With respect to claims 2-3 and 10-11, even though the ('984) does not explicitly describe the means of conjoining the sidewalls of the cover and the

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base, since such a decision is a matter of a design choice to be made by one having ordinary skill in the art.

With respect to claims 4-5 and 12, Bryson, Jr., et al teaches means for promoting perfuming the air including a plurality of perforations in the cover and the base (figure 1, 18, 98, 16, and 84) and also teaches a two-sided adhesive strip (figure 9, 78).

9. Claims 6-7, 13-14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryson, Jr., et al (U.S.P.N. 5,148,984) in view of Flashinski et al (U.S.P.N. 6,031,967) and further in view of Stickford, Jr. et al (U.S.P.N. 5,697,435).

The teachings of Bryson, Jr., et al have previously been set forth with respect to claims 1, 8-9, and 15-16. However with respect to claims 6-7, 13-14, and 17-19, Bryson, Jr., et al fails to teach that the base is metallic with serriform bottom surface and the bottom surface is non-planar. However, with respect to claims 6-7, 13-14, and 17-19, Flashinski et al discloses a container with a non-planar (figure 5, unlabeled bottom surface) metallic bottom surface (col.3, lines 30-39), but fails to teach the use of a serriform topography. Stickford, Jr. et al teaches the use of a serriform topography or accordion (figure 10, 43) in the art of heat exchangers. Thus, it would have been to one having ordinary skill in the art to modify the dispenser of Bryson, Jr., et al to include a serriform topography surface in order to reduce liming and increase the heat transfer (Stickford, Jr. et al, col.7, lines 16-20).

### **Conclusion**

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10. The prior art made of record but not relied upon is considered pertinent to applicant's disclosure. Park et al (U.S.P.N. 5,028,651), Spector (U.S.P.N. 4,544,592), Monteith (U.S.P.N. 2,238,476), and Parks (U.S.P.N. 2,810,167) all disclose various heating sources for vaporizing a fragrance.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 8:30-5:00.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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